IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5533 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAFIK ALIAS RAFIK BABAAL S/O MUSTUFABEG SARDARBEG MIRZA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS KD PARMAR for Petitioner.
Mr.L.R.Pujari, AGP for respondents.,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 05/12/2007

ORAL JUDGMENT

1. Heard learned Counsel Mrs.K.D.Parmar for the petitioner-detenu and learned A.G.P. Mr.L.R.Pujari for the respondents.

2. The petitioner-detenu has challenged the

legality and validity of the order of detention dated 29-1-2007 passed by the Police Commissioner, Surat City, in exercise of powers under sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985(for short " the PASA Act").

3. The petitioner-detenu has been branded as a "dangerous person" within the meaning of Section 2(c) of the PASA Act. The grounds of detention supplied to the petitioner indicate that for recording subjectrive satisfaction, the detaining authority has relied on two pending cases of picketpocketting registered against the detenu being CR no.16/07 dt.9-1-2007, CR no.25/07 dt.12-1-2007 under the Indian Penal Code. Both these cases are relating to pickpocketing and harassing the general public by moving about with deadly weapons, thereby creating an atmosphere of terror among the general public. The detaining authority has also considered the certain statements of witnesses, and thereafter, the detention order came to be passed.

4. The learned Advocate for the detenu has assailed the impugned order of detention on several grounds as stated in the memo of petition. However, he has confined his arguments mainly on the point that the activities of the detenu as a dangerous person has adversely affected or is likely to affect adversely the mainteance of public order.

5. The learned Counsel for the detenu submitted that the detaining authority ought not to have

recorded subjective satisfaction on mere registration of above criminal cases which are pending that the activities of the detenu have potential to disturb public order.

6. This petition is capable of being disposed of on the sole ground that the activities of the petitioner were not prejudicial to the maintenance of public order.In the present case, merely on the basis of commission of two offences of pickpocketing and movement of the petitioner with deadly weapons, it cannot be said that the activities of the detenu are prejudicial to the maintenance of public order. To reach to the subjective satisfaction that the activities of theft and involvement in the criminal cases aforestated by the petitioner-detenu were prejudicial to the maintenance of public order, there should be cogent and credible material showing that the activities of the petitioner directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property etc. While undertaking this exercise, the detaining authority must draw a clear line between the cases falling within breach of law and order and breach of public order. In the opinion of this Court, the activities of the present petitioner-detenu can at the most fall within breach of law and order which can be adequately punished otherwise. In this context reference may be had to the decision rendered in the case of **Harpreet Kaur vs. State of Maharashtra,**

reported in 1992 SC 797, wherein it has been held that involvement of the accused in fourteen offences including offences of lifting gas cylinders cannot be said to be prejudicial or dangerous to the maintenance of public tranquility and the authority was not justified in arriving at the subjective satisfaction that the activities of the petitioner were likely to affect the maintenance of public tranquility.

7. In view of the above settled legal position, the say of the learned Counsel for the detenu that the detaining authority has committed grave error in arrising at a subjective satisfaction that the detenu is a “dangerous person” and his activities are prejudicial or dangerous to maintenance of public order requires to be accepted. The order of detention, is therefore not sustainable in the eye of law.

8. In the result, the petition is allowed. The impugned order of detention dated 29-1-2007 passed by the Police Commissioner, Surat City, is hereby quashed and set aside and the detenu is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

(M.D.Shah,J.)

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